



Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -50-130
Regulation title	Amount, Duration and Scope of Services: Skilled nursing facility services, EPSDT, and family planning
Action title	Prior Authorization of Intensive In- Home Services
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The agency is proposing this regulatory action to comply with Chapter 879, Item 306, OO of the 2008 *Acts of Assembly* that gives the Department of Medical Assistance Services (DMAS) authority to implement prior authorization and utilization review for community-based mental health services for children and adults. In recent years the utilization of certain community-based mental health services has increased substantially. Intensive In-Home Services expenditures were expected to increase 25% during SFY 2008. In order to address these expected increases in utilization the General Assembly provided DMAS authority to implement prior authorization of these services in order to ensure that such services are provided based on Medicaid service and appropriate medical necessity criteria.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The 2008 Acts of Assembly, Chapter 879, Item 306 OO provides DMAS the authority to implement prior authorization and utilization review for community-based mental health services for children and adults.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Department is promulgating this regulation to comply with Chapter 879, Item 306, OO of the 2008 *Acts of Assembly* that implements prior authorization review for community-based mental health services for children and adults.

This regulatory action will help protect the health, safety and welfare of Medicaid recipients by minimizing inappropriate utilization of unnecessary services, thereby preserving these important medical services for the recipients who truly need them.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The section of the Virginia Administrative Code that is affected by this action is: Amount, Duration and Scope of Services: Skilled nursing facility services, EPSDT, and family planning - - Prior Authorization of Intensive In-Home Services (12 VAC 30-50-130).

This action implements new prior authorization requirements for Intensive In-Home Services for children and adolescents. DMAS already has regulations that address prior authorization for children’s group home services (Levels A & B) and performs utilization review for community-based mental health services. Therefore those aspects of the Item 306 OO of the 2008 General Assembly are already in operation and need not be addressed in this package.

The particular change implemented in this action is directed to subsection 12 VAC 30-50-130 (B)(5)(a) (Community mental health services). This subsection describes Intensive in-home services to children and adolescents under age 21, which includes the following: crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. Intensive in-home services are already limited annually to 26 weeks. In this action DMAS is adding the requirement for prior authorization that providers must obtain in order for them to be reimbursed for these services.

Issues

- Please identify the issues associated with the proposed regulatory action, including:*
- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The addition of prior authorization will help ensure that services are provided to individuals who meet medical necessity criteria. This will prevent inappropriate utilization of the services and preclude expenditures for unnecessary services.

This regulatory action will require providers to request prior authorization for this service. DMAS made efforts to minimize the amount of documents required for authorization and the frequency for requesting authorization to mitigate the impact on providers.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements that apply to this prior authorization policy.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No disproportionate impact on particular localities has been identified as this change will be uniformly applied to all providers of this service statewide.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Catherine Hancock, Policy & Research Division, 600 East Broad Street, Richmond, Virginia, 23219, e-mail address: Catherine.Hancock@dmas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The projected cost to implement prior authorization for Intensive In-Home services is \$1,341,080 total funds (GF and NGF). Savings are expected to be \$2,682,160 for the first year. For Children’s Residential Levels A & B, the total cost per year to implement the contractor for prior authorization is projected to be \$118,775. The projected savings are \$231,510 in the first year.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no direct costs to the locality.</p>

<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Providers of Medicaid Intensive In-Home and Children’s Residential (Level A & B services).</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 118 providers of Intensive In-Home Services. The majority of these providers are small businesses.</p> <p>There are approximately 161 providers of Children’s Level A & B providers. The majority of these providers are small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>This regulation will require that providers contact the DMAS contractor if services extend beyond a specified number of weeks. The number of weeks will be determined by DMAS and communicated in the provider manual. The actual cost to the provider will depend on the level of staff that is designated to make the call. The provider will ensure continued payment of services rendered by obtaining prior authorization.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative is to not implement prior authorization. This could result in expenditures for unnecessary services. DMAS has made efforts to minimize the amount of documents required for authorization and the frequency for requesting authorization to mitigate the impact on providers.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Intensive In-Home services are intended to be crisis-oriented. In order to minimize the impact on providers, the service can be provided initially, without prior authorization. When the initial time frame is passed, prior authorization will be required for intensive in-home services. This

approach allows providers to render services but if the child needs services beyond the initial phase, an authorization is required.

For children's residential (Levels A and B), a length of time between authorizations was chosen to complement Comprehensive Services Act guidelines. Prior authorization is not a new requirement for these services. The provider will now be required to obtain authorization from DMAS or its contractor. Previously, documentation for authorization was required to be in the clinical record.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

DMAS' Emergency regulation/Notice of Intended Regulatory Action was published in the July 21, 2008 *Virginia Register* (VR 24: 24) for its public comment period from July 21, 2008 to August 20, 2008.

No comments were received during the Notice of Intended Regulatory Action (NOIRA) comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC 30-50-130		Under Community mental health services, there is no current explicit requirement for prior authorization for community-based mental health services for children and adults.	This change adds that explicit requirement for prior authorization for community-based mental health services for children and adults.